

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**BILLY WORTHY**

Claimant

VS.

**OPERATION ENTERPRISES, INC.**

Respondent

AND

**CONTINENTAL WESTERN INS. CO**

Insurance Carrier

Docket No. 1,020,131

**ORDER**

Respondent and its insurance carrier (respondent) request review of the February 1, 2005 preliminary hearing Order entered by Administrative Law Judge (ALJ) John D. Clark.

**ISSUES**

The ALJ granted claimant's request for additional medical treatment after explicitly finding "[c]laimant's present problems [are related] to the work related injury" of July 30, 2004.<sup>1</sup>

The respondent requests review of this decision, alleging the ALJ erred in concluding claimant's present need for treatment is causally related to his July 30, 2004 injury. Respondent maintains claimant's present physical complaints and the need for surgery is attributable to an intervening accident, and not the compensable injury at issue in this claim. Accordingly, respondent maintains the ALJ's preliminary hearing Order should be reversed.

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<sup>1</sup> ALJ Order (Feb. 1, 2005).

Claimant argues that the ALJ's preliminary hearing Order should be affirmed in all respects. The treating physician, Dr. Paul Stein, has opined that while claimant's subsequent job as a truck driver in the latter part of 2004 may have aggravated his ongoing neck complaints, his present need for surgery is attributable to the July 30, 2004 accident.

The only issue for the Board on this appeal is whether claimant's present need for medical treatment is directly related to his July 30, 2004 compensable accident or whether the need for medical treatment was caused by his subsequent employment.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Having reviewed the whole evidentiary record filed herein, the Board makes the following findings of fact and conclusions of law:

Claimant suffered a compensable accident on July 30, 2004. At respondent's direction, he received treatment with Dr. Mark S. Dobyons who, after a MRI, diagnosed a herniated disk at the C5-6 level with bulging on the right. The MRI also reflected a bulging at the C6-7 level. Dr. Dobyons referred claimant to Dr. Stein who treated him conservatively with medications, therapy and injections. As of December 2, 2004, Dr. Stein suggested that claimant would need surgery if his symptomatology continued or worsened.<sup>2</sup>

Claimant left respondent's employ in September 2004 over a salary dispute. Following his departure, he enrolled in and successfully completed a truck driving course. He was hired as a truck driver in December 2004, but after working for 10 days he found he was unable to do the job without experiencing difficulty holding on to the steering wheel. He has ceased those activities and sought additional evaluation and treatment. Dr. Stein referred claimant to Dr. M. Camden Whitaker who saw claimant on January 17, 2005.

Dr. Whitaker diagnosed a herniated disk at C5-6 on the right as well as a smaller right-sided herniated nucleus pulposus at C6-7. Both of these were found to be causing radiculopathy. Dr. Whitaker recommended a selective nerve root block as a means of isolating the source of claimant's pain. Once that is completed and the results reviewed, a single or multiple level fusion was recommended.

After considering the evidence offered by the parties the Board finds that the February 1, 2005 Order should be affirmed.

The Board concludes that the medical evidence supports the ALJ's preliminary hearing Order. Dr. Stein, the treating physician, has opined that while claimant's subsequent employment as a truck driver might have aggravated his symptoms, his present need for surgery is attributable to his July 30, 2004 accident. Respondent has

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<sup>2</sup> P.H. Trans., Ex. 1 at 12 (Dr. Stein's Dec. 2, 2004 progress note).

offered no evidence to contradict this opinion, other than to vaguely suggest that claimant's hunting activities and/or his 10 days of attempting to work as a truck driver are the source or cause of his present complaints of pain and radiating numbness. The ALJ was not persuaded by this argument and neither is the Board. The uncontroverted medical evidence supports the ALJ's factual and legal conclusions.

As provided by the Workers Compensation Act, preliminary hearing findings are not final, but subject to modification upon a full hearing of the claim.<sup>3</sup>

**WHEREFORE**, it is the finding, decision and order of the Board that the Order of Administrative Law Judge John D. Clark dated February 1, 2005, is affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_\_ day of March, 2005.

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BOARD MEMBER

c: Michael Snider, Attorney for Claimant  
Kirby Vernon, Attorney for Respondent and its Insurance Carrier  
John D. Clark, Administrative Law Judge  
Paula S. Greathouse, Workers Compensation Director

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<sup>3</sup> K.S.A. 44-534a(a)(2).